

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1529 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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NOORBIBI WD/O HASAMBHAI KALUBHAI MANIYAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. The petitioner - Noorbibi, widow of Hasambhai Kalubhai Maniar, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in

exercise of powers under Section 3(1) of the PASA Act, dated December 27, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 16 offences registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on November 23, 1999 and December 18, 1999 and came to conclusion that the petitioner is a "bootlegger", that her activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Heard the learned advocate Mr. Prajapati and learned AGP Mr. K.T. Dave.

#. This is a case where the petition deserves to be allowed on a single ground of non-application of mind on the part of the detaining authority. Attention of this Court is drawn to the arrest memo of the detenu in respect of the prohibition case no. 936/99 which is dated October 21, 1999. In that offence, the detenu was arrested on October 21, 1999 as can be seen from 'Chehra Nisaan Patrak'. The detenu preferred an application for bail on December 21, 1999 and was bailed out on that very day, meaning thereby that the detenu was in judicial custody during October 21, 1999 to December 21, 1999. Now, if the statements of anonymous witnesses are seen, they relate to incidents dated November 23, 1999 and December 18, 1999, both of which have occurred during the period in which the petitioner was in judicial custody. Perusal of these statements indicate that the anonymous witnesses have tried to implicate the detenu by showing her presence at the place of the incidents which is not possible. This aspect would have caught the attention of the detaining authority if the papers were considered by the authority. The statements of witnesses would, therefore, become doubtful. Therefore, the order passed without considering such material aspect would stand vitiated for want of application of mind. The petition, therefore, deserves to be allowed on this ground alone.

#. The petition is allowed. The impugned order of detention dated December 27, 1999 is hereby quashed and set aside. The detenu - Noorbibi, widow of Hasambhai Kalubhai Maniar is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-